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HAWAII
LABOR RELATIONS BOARD

Attorneys for DIRECTOR OF LABOR
And INDUSTRIAL RELATIONS

HAWAII LABOR RELATIONS BOARD

STATE OF HAWAII

In the Matter of DIRECTOR,
DEPARTMENT OF LABOR AND
INDUSTRIAL RELATIONS,

Complainant,

v.

CERTIFIED CONSTRUCTION, INC.,

Respondent.

CASE NO. OSAB 2006-3
(OSHCO No. F9171)
(Inspection No. 309453546)

STIPULATION AND SETTLEMENT
AGREEMENT; EXHIBIT A-B;
APPROVAL AND ORDER

STIPULATION AND SETTLEMENT AGREEMENT

Complainant DIRECTOR OF LABOR AND INDUSTRIAL RELATIONS

("Director") and Respondent CERTIFIED CONSTRUCTION, INC. ("Respondent"), having
reached a full and complete settlement of the above-captioned contested case presently pending

before the Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

On or about November 28, 2005 through December 06, 2005, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located at 705 N Nimitz Highway, Honolulu, Hawaii 96817.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty to Respondent on January 13, 2006, alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$11,000.00. *See Exhibits "A" and "B".*

Respondent timely contested the January 13, 2006 Citation and Notification of Penalty.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").
2. At all relevant times, Respondent maintained a workplace at 705 N Nimitz Highway, Honolulu, Hawaii 96817.
3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirement of HRS Chapter 396, the Hawaii Occupational Safety and Health Law.

4. At all relevant times, Respondents workplace at 705 N Nimitz Highway, Honolulu, Hawaii 96817 was subject to the regulations set forth in 29 CFR 1926.501(b)(10), 29 CFR 1926.502(h)(1)(iv), and 29 CFR 1926.502(h)(1)(v).

5. Respondent has abated all violations associated with the above referenced citation, as acknowledged by the Department of Labor and Industrial Relations. *See* Pg. 7, Exhibit "B".

6. Respondent has re-trained its employees on the requirements set forth in 29 CFR 1926.501(b)(10), 29 CFR 1926.502(h)(1)(iv), and 29 CFR 1926.502(h)(1)(v), and inform employees that they will be disciplined for violating such requirements. Additionally, Respondent will perform regular checks to specifically determine whether employees are complying with the requirements and will immediately discipline employees found in violation thereof.

7. Respondent's safety manager will conduct fall protection and safety assessments for each of the Respondent's jobsites and the Respondent will implement such safety systems as it determines based on assessments in accordance with the safety regulations.

8. Respondent will have all its employees, by the end of May 2006, certified as having completed OSHA's 10-hour fall protection course.

9. Nothing in this Stipulation and Settlement Agreement shall relieve Respondent from complying with HRS Chapter 396, the Hawaii Occupational Safety and Health Law, 29 CFR 1926.501(b)(10), 29 CFR 1926.502(h)(1)(iv), or 29 CFR 1926.502(h)(1)(v).

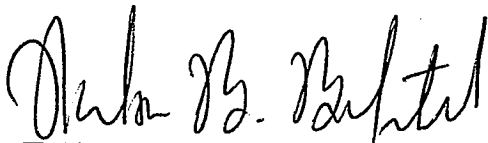
10. The Citation and Notification of Penalty issued on January 13, 2006 will not be considered as a basis for any additional citation for three years following the date of this settlement, unless there are any additional violations of the requirements set forth in 29 CFR

1926.501(b)(10), 29 CFR 1926.502(h)(1)(iv), and 29 CFR 1926.502(h)(1)(v), and Respondent fails to discipline employees after violations are discovered.

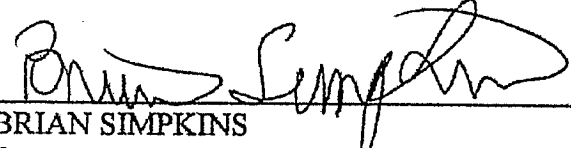
11. The Director reduces the amended aggregate penalty from \$11,000 to \$6,050.

12. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate 29 CFR 1926.502(h)(1)(iv), or 29 CFR 1926.502(h)(1)(v).

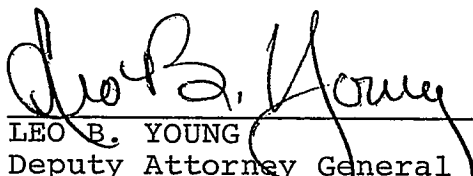
DATED: Honolulu, Hawaii, 5-3-06


NELSON B. BEFITEL
DIRECTOR, Department
of Labor and Industrial
Relations, State of Hawaii

CERTIFIED CONSTRUCTION, INC.


BRIAN SIMPKINS
Owner

APPROVED AS TO FORM:


LEO B. YOUNG
Deputy Attorney General
Attorney for Director
of Labor and Industrial
Relations, State of Hawaii

~~DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS~~

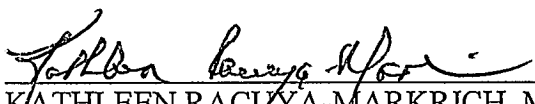
~~LEO B. YOUNG
Deputy Attorney General
Attorney for Director of Labor and Industrial
Relations, State of Hawaii~~

APPROVED AND SO ORDERED BY
LABOR AND INDUSTRIAL RELATIONS
APPEALS BOARD:

ORDER NO. 200 191^u
DATED: May 26, 2006


BRIAN K. NAKAMURA, Chairman


EMORY J. SPRINGER, Member


KATHLEEN RACYA-MARKRICH, Member

In the Matter of the Director, Department of Labor and Industrial Relations v. Certified Construction, Inc., OSAB 2006-3 – Stipulation and Settlement Agreement

State of Hawaii
Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division
830 PUNCHBOWL STREET, ROOM 425
Honolulu, HI 96813
Phone: (808) 586-9110 FAX: (808) 586-9104



Certified Number: 7004 1350 0000 8139 0544

Citation and Notification of Penalty

To:

Certified Construction Inc
and its successors
1009 Ulupono St
Honolulu, HI 96819

Inspection Number: 309453546 (Karen Kamihara)

Inspection Date(s): 11/28/2005 - 12/06/2005

Issuance Date: 01/13/2006

OSHCO ID: F9171

Optional Report No.: 01306

Inspection Type: Referral

Scope of Inspection: Comprehensive Inspection

Inspection Site:

705 N Nimitz Hwy
Honolulu, HI 96817

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 4, Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violation which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For Willful and Repeat violations, documents (example: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as Serious and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - you should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 01/13/2006. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, Honolulu, HI 96813 on _____ at _____. Employees and/or representatives of employees have a right to attend an informal conference.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 309453546
Inspection Dates: 11/28/2005 - 12/06/2005



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 01/13/2006

Citation and Notification of Penalty

Company Name: Certified Construction Inc
Inspection Site: 705 N Nimitz Hwy, Honolulu, HI 96817

Citation 1 Item 1 Type of Violation: **Repeat**

29 CFR 1926.501(b)(10) [Refer to chapter 12-121.2, HAR] was violated because:

Eight employees were observed on a flat roof 25 feet above the ground and were not in compliance with the HIOSH fall protection standards. The company was attempting to use a combination of a warning line system and a safety monitor. The safety monitor was assisting with roofing work and not monitoring the employees while the employees were working at various parts of the roof. A 25-foot fall exposes the employees to serious injuries or death.

29 CFR 1926.501(b)(10) states "Roofing work on Low-slope roofs. Except as otherwise provided in paragraph (b) of this section, each employee engaged in roofing activities on low-slope roofs, with unprotected sides and edges 6 feet (1.8 m) or more above lower levels shall be protected from falling by guardrail systems, safety net systems, personal fall arrest systems, or a combination of warning line system and guardrail system, warning line system and safety monitoring system. Or, on roofs 50-feet (15.25 m) or less in width (see Appendix A to subpart M of this part), the use of a safety monitoring system alone [i.e. without the warning line system] is permitted."

Location: 705 N Nimitz Hwy

Abatement Documentation Required

Certified Construction, Inc. was previously cited for a violation of this occupational safety and health standard or its equivalent standard 1926.501(b)(10) which was contained in HIOSH inspection number 308485945, citation number 1, item number 1, issued on May 24, 2005 which became a final order on June 14, 2005 and HIOSH inspection number 308490101, citation number 2, item number 1, issued on October 13, 2005 which became a final order on November 22, 2005.

Date By Which Violation Must be Abated:
Penalty:

01/17/2006
\$10,000.00

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 309453546
Inspection Dates: 11/28/2005 - 12/06/2005



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 01/13/2006

Citation and Notification of Penalty

Company Name: Certified Construction Inc
Inspection Site: 705 N Nimitz Hwy, Honolulu, HI 96817

The alleged violations below (1a & 1b) have been grouped because they involve similar or related hazards that may increase the potential for illness or injury resulting from an accident.

Citation 2 Item 1a Type of Violation: **Serious**

29 CFR 1926.502(h)(1)(iv) [Refer to chapter 12-121.2, HAR] was violated because:

Eight roofers were observed walking and working on a flat 70 foot by 150 foot roof 25 feet above the ground. The roofers were at various locations on the roof and not in communication distance from the safety monitor.

29 CFR 1926.502(h)(1)(iv) states "The safety monitor shall be close enough to communicate orally with the employee; and"

Location: 705 N Nimitz Hwy

Date By Which Violation Must be Abated:
Penalty:

Corrected
\$1,000.00

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 309453546
Inspection Dates: 11/28/2005 - 12/06/2005



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 01/13/2006

Citation and Notification of Penalty

Company Name: Certified Construction Inc
Inspection Site: 705 N Nimitz Hwy, Honolulu, HI 96817

Citation 2 Item 1b Type of Violation: **Serious**

29 CFR 1926.502(h)(1)(v) [Refer to chapter 12-121.2, HAR] was violated because:

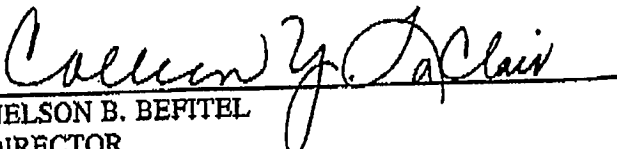
Eight roofers were observed walking and working on a flat roof 25 feet above the ground. The safety monitor was not to have other responsibilities which could take the monitor's attention from the monitoring function; for example, the assigned monitor was involved in roofing work while other roofers were working on various locations on the roof.

29 CFR 1926.502(h)(1)(v) states "The safety monitor shall not have other responsibilities which could take the monitor's attention from the monitoring function."

Location: 705 N Nimitz Hwy

Date By Which Violation Must be Abated:

Corrected

for 
NELSON B. BEFITEL
DIRECTOR

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

State of Hawaii
Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
Honolulu, HI 96813

SUMMARY OF PENALTIES

Company Name: Certified Construction Inc
Inspection Site: 705 N Nimitz Hwy
Honolulu, HI 96817
Issuance Date: 01/13/2006

Summary of Penalties for Inspection Number	309453546
Citation 01, Repeat	= \$10,000.00
Citation 02, Serious	\$1,000.00
TOTAL PENALTIES	\$11,000.00

Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.